

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5978 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO
-

T. B. YADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5978 of 1989
MR PM THAKKAR for Petitioner
MR DA BAMBHANIA for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3
-

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/12/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dtd. 28/7/1989 (Annexure-A) prematurely retiring the petitioner from service with immediate effect, in

exercise of the powers conferred upon the State Government under Rule 161 (aa) (i)(1) of Bombay Civil Service Rules. At the time when the impugned order was passed, the petitioner had completed 55 years of age and was holding the post of Deputy Superintendent of Police ('DY.S.P.' for short).

2. The facts leading to filing this petition, briefly stated and as averred by the petitioner, are as under;

The petitioner joined service as a Police Constable in the year 1953. Thereafter, the petitioner passed Police Sub-Inspector Training Examination and the petitioner was appointed to the post of Police Sub-Inspector ('P.S.I.' for short) in the year 1960. The petitioner was then promoted to the post of Police Inspector. The petitioner was next promoted to the higher post of Dy.S.P. on 3/8/1983. According to the petitioner, the service record of the petitioner, for the last ten years was as under;

i] No adverse remarks against the petitioner for the years 1978-79 to 1981-82.

ii] Adverse remarks for the year 1982-83 -

"work of the petitioner regarding illicit liquor and gambling, night round, parade and inspection is not satisfactory and a penalty for stoppage of one increment for the period of 6 months for making false allowance bill has been imposed upon the petitioner."

According to the petitioner against the above adverse remarks, representation dtd. 15/9/1983 was made by the petitioner which was not decided till the date of filing of this petition.

iii] No adverse remarks for the year 1983-84, on the contrary, the petitioner was allowed to cross Efficiency Bar on 5/12/1983 w.e.f.1/3/1979.

iv] For the year 1984-85, adverse remarks were as under;

"The petitioner is habitual in sending his case diaries late more particularly case diary of Dhansura Police Station Crime Register No.57 of 1984"

vi] Adverse remarks for the year 1985-86 came to be expunged on 25/8/1988.

vii] Adverse remarks for the year 1986-87 were to the effect that ;

"the petitioner does not pay proper attention in sending weekly diary and crime memos."

The petitioner's representation dtd. 4/5/1989 against the said adverse remarks was not decided till the date of filing of this petition.

3. In response to the rule issued in the matter, affidavit-in-reply dtd. 16/10/1995 has been filed by the Deputy Secretary, Government of Gujarat, Home Department, stating the following broad facts which are relevant for deciding the controversy raised in this petition;

The Review Committee did not find the petitioner fit for being continued in Government service at the age of 55 years. The Committee did not recommend his further continuance in Government Service in view of his doubtful integrity and poor service record for the last 8 years. There were adverse remarks in the petitioner's confidential remarks for the years 1982-83, 1984-85 and 1986-87.

As regards the petitioner's alleged representation dtd. 15/9/1983 against the adverse remarks for the year 1982-83, it is stated that neither Home Department nor the office of the Director General of Police had received such representation.

4. At the hearing of this petition, the learned counsel for the petitioner has submitted that when the petitioner was promoted from the post of Police Inspector to the post of Deputy Superintendent of Police w.e.f.3/8/1983 and when the petitioner was permitted to cross Efficiency Bar on 5/12/1983, it was not open to the respondent authority to take into consideration adverse remarks for the years prior thereto, particularly for the year 1982-83.

Reliance has been placed on the decision of the Apex Court reported in AIR 1987 SC 954.

It is further contended that the Government has relied upon the adverse remarks made in the petitioner's confidential report about doubtful integrity. The

remarks are not produced on the record of this petition nor they were communicated to the petitioner. Strong reliance has been placed on the decision in State of Gujarat and anr. Vs. Suryakant Chunilal Shah and ors., (1999) 1 SCC 529.

5. As far as the first ground of challenge is concerned, the same would not survive in view of the decision of the Supreme Court rendered by a Bench of three Hon'ble Judges in the case of State of Punjab v/s. Gurdas Singh etc. AIR 1998 SC 1661, wherein the Supreme Court has laid down the following principles;

"Before the decision to retire a Government servant prematurely is taken the authorities are required to consider the whole record of service. Any adverse entry prior to earning to promotion or crossing of efficiency bar or picking up higher rank is not wiped out and can be taken into consideration while considering the overall performance of the employee during whole of his tenure of service whether it is in public interest to retain him in service. The whole record of service of the employee will include any uncommunicated adverse entries as well."

In view of the above principle, no fault can be found with the Government taking into consideration the adverse remarks for the year 1982-83, merely on the ground that the petitioner was subsequently promoted as Dy.S.P. or that he was also permitted to cross Efficiency Bar in the year 1983. The petitioner's representation against the adverse remarks for the year 1982-83, is not produced on the record of this petition. In any view of the matter, since the so-called representation was not received by the competent authority, that issue need not be pursued any further. It is also required to be noted that the apex Court has held that even uncommunicated adverse remarks can be taken into consideration for deciding whether the Government employees should be prematurely retired from service in public interest. Hence even if there was any material in the case that the representation against the adverse remarks was not decided, the impugned order of premature retirement cannot be interfered with on the ground. This principle will also apply to the adverse remarks against the petitioner for the year 1986-87.

6. Even after the petitioner's promotion as Dy. S.P. and after the petitioner was permitted to cross Efficiency Bar in the year 1983, there were adverse remarks in the confidential reports of the petitioner for

the years 1984-85 and 1986-87. In view of the said remarks which are already quoted hereinabove, it cannot be said that there was no material available with the Government for coming to the conclusion that it was not in public interest to continue the petitioner in service.

7. As regards the second contention about doubtful integrity, this Court is not required to examine contention in view of fact that even if that remark is ignored, the other material available on record was sufficient to come to the conclusion that it was in public interest to prematurely retired the petitioner, it cannot be said that the impugned order of premature retirement was passed arbitrarily or without any basis.

8. Reliance placed on the decision in State of Gujarat vs. Suryakant Chunilal (Supra) is misconceived. In that case the adverse remarks about the doubtful integrity was made in the confidential report of an employee on the ground that the employee was involved in two criminal cases relating to issue of bogus permits and tempering of the official records. In that case the Court held that pendency of the Criminal cases was not sufficient to retire the employee compulsorily, though, it would depend upon the nature of the offences and circumstances of each case to judge whether involvement in a criminal case can be ground for compulsory retirement.

9. As already indicated above, even without going into the question whether there was any justification for making remarks about doubtful integrity of the petitioner, adverse remarks in the confidential reports of the petitioner for the years 1982-83, 1984-85 and 1986-87 were such that the decision of the Government to prematurely retire the petitioner from service in public interest cannot be said to be illegal or arbitrary.

9. In view of the above discussion, the petition is dismissed. Rule discharged with no order to costs.

(M.S. SHAH, J.)
Rafik